

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 895 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?-No.
2. To be referred to the Reporter or not?-No. :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No. :

VORA UMAR BHANA

Versus

DARJI HARGOVIND LAXMANBHAI

Appearance:

MR YS MANKAD for Petitioners
MR NAGIN N GANDHI for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. The present Revision application is filed by the original defendants, against whom the respondent-plaintiff had filed a suit, being Regular Civil Suit No.122 of 1980, in the Court of Civil Judge (J.D.), Botad. The case of the landlord in the said suit was that he is the owner of the premises situated in

Botad town and one small room was let out by him to the defendant No.1 at the rate of Rs.6/- per month. That the defendant No.1 is residing in Muslim Society since last more than one year and he has transferred the suit premises illegally to his brother, i.e. defendant No.2. It is also his case that the defendant No.1 is in arrears of rent for more than six months and, therefore, he was subjected to demand notice on 25.6.1980. In spite of that, the defendant No.1 has failed to hand over the possession nor he tendered any arrears of rent in response to the suit notice of demand. Ultimately, therefore, the aforesaid suit was filed for getting decree for possession from the defendant No.1 on the ground of illegally transferring suit premises to his brother, i.e. defendant No.2. as well as on the ground of arrears of rent.

2. The defendant No.1 appeared in the suit and gave his reply by filing Written Statement at Exhibit 13. He denied that he had shifted to Muslim Society. He also denied the claim of arrears of rent on the ground that even though he had sent two Money Orders to the plaintiff, he had refused the same. He, accordingly, denied the suit of the plaintiff.

3. The defendant No.2 adopted the averments made in the Written Statement by the defendant No.1, by giving Pursis at Exhibit 14.

4. The learned Trial Judge, thereafter, framed various issues and after recording the evidence of the parties, came to the conclusion that so far as arrears of rent is concerned, the defendants can be said to be ready and willing to pay the arrears of rent. However, on the ground that the defendant No.1 has left the suit premises after handing over the same to his brother, i.e. defendant No.2, the decree for possession was passed on the ground of illegally assigning / transferring the suit premises by the defendant No.1 in favour of defendant No.2. The trial court, accordingly, decreed the suit for possession. The aforesaid decree of the trial court was challenged by the original defendants by way of Regular Civil Appeal No.14 of 1983. The aforesaid appeal was dismissed by the learned Joint District Judge, Bhavnagar, by his order dated 31st August, 1987. The original defendants, ultimately, preferred this Revision Application under Section 29(2) of the Rent Act, challenging the order of the appellate court.

5. At the time of hearing of this revision application, it was argued by learned Advocate Mr.Y.S.

Mankad that looking to the evidence on record, it should be presumed that the defendant No.1 was residing in the suit premises and he had merely temporarily gone to the Muslim Society with his wife for the purpose of repairing work at the house of Muslim Society, which belongs to the uncle of his wife. It was next contended by him that he has never parted with the possession of the suit premises in favour of his brother, i.e. defendant No.2, as his brother is staying in different town altogether. According to him, therefore, the order of the appellate court is required to be interfered with by this Court in the present Revision Application. Against the aforesaid argument, it was argued by Mr.Gandhi, learned Advocate for the respondent, that there is overwhelming evidence on the record to show that the defendant No.1 went to reside in the Muslim Society and it was not only mere temporary occupation at the Muslim Society on his part and he allowed his brother to have complete control of the suit premises, who was occupying the said premises at the relevant time when the suit was filed. In that view of the matter, according to Mr.Gandhi, no interference of this Court is required while exercising revisional jurisdiction and the finding of the courts below are based on appreciation of oral as well as documentary evidence on record.

6. The copy of the evidence of the parties, both oral and documentary, is made available to this Court by the learned counsel appearing for the parties. Accordingly, I have gone through the record of the case as well as I have also gone through the judgments of both the courts below and in my view, the submission of Mr.Gandhi is correct in so far as the question about transferring the interest of the suit property by defendant No.1 to defendant No.2 is concerned. It is required to be noted that so far as the defendant No.2, i.e. brother of defendant No.1 is concerned, the suit notice Exhibit 19 was accepted by him at the rented premises. There is ample evidence on record for coming to the conclusion that the defendant No.1 has left the suit premises and has gone to the Muslim Society. It is not possible to believe that the defendant No.1 has gone to that premises only for some temporary period for the purpose of repairing work of that property. It has come in evidence that the defendant No.1 was residing in that premises since last more than 2 to 3 years and, accordingly, the defendant No.1 and his wife and other family members are residing in the Muslim Society since considerable time and the rented premises was given to his brother defendant No.2 at the time of shifting at the Muslim Society. It, therefore, can be safely said that

the defendant No.1 has parted with the possession of the suit property and, therefore, under the provisions of Section 13(1)(e), decree for possession is required to be passed on the ground of transferring or assigning the suit premises by the tenant and, therefore, it cannot be said that any error is committed by the courts below while passing the decree. Though, of course, there is no claim for possession on the ground of tenant acquiring alternative accommodation, as contemplated by Section 13(1)(l) of the Rent Act, still, the fact remains that the tenant has shifted in other premises since considerable period and is residing with his family members merrily in the aforesaid premises. The learned appellate Judge has considered the evidence as a whole and has, accordingly, confirmed the decree for possession passed by the trial court. Mr.Mankad, however, argued that as per the ration cards at Exhibit 48 and 49, it cannot be said that his brother is residing in the suit premises and that defendant No.1 was residing in Muslim Society. The learned appellate Judge has found that these ration cards at Exhibits 48 and 49 have been issued subsequently after institution of the suit and, therefore, rightly no importance was attached to the aforesaid ration cards by the learned appellate Judge. It was found by the appellate court that even in Exhibit 48, some tampering is there as there is a different ink in different handwritings. In any case, since defendant No.1 has already shifted to other premises and is residing in that premises since long, he should have gracefully handed over the possession of the suit premises to the landlord. The defendant No.1 is not in a position to show that it was only for a temporary period for repairing that he had gone to reside in Muslim Society. In view of the aforesaid position, I do not find any substance in the present revision application. It cannot be said that there is any error of law, which can be said to have been committed by the courts below in passing the decree for possession in favour of the landlord. There is absolutely no substance in this Revision Application and in that view of the matter, the same is dismissed. Rule is discharged, with no order as to costs.

16th June, 2000 (P.B. Majmudar, J.)

(apj)